

REMARKS

At the outset, the Examiner is thanked for the courtesies extended to the Applicants' representative, Kurt M. Eaton in a telephone interview on December 23, 2003. During the interview, the references to Sullivan et al., Gerland, and National Gardening were discussed with respect to the claimed subject matter, however, no agreement was made as to the particular teachings of the references with respect to the claimed inventions. Applicants thank the Examiner for the thorough review and consideration of the subject application.

In the Final Office Action dated October 7, 2003, the Examiner rejected claims 1, 2, 4, 8-11, 13-15, 21-24 and 26 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. (U.S. Pat. No. 6,477,531) in view of Gerland et al. ("Taking A Spade To The Web") and National Gardening ("National Gardening Association Home Page", extracted from the Internet on 1/16/02); rejected claims 3 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening; rejected claims 5-7, 18-20, and 28-30 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening and further in view of Sturgeon et al. (U.S. Pat. No. 5,726,884); rejected claims 12 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening; and rejected claim 27 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al., National Gardening, and an "Official Notice". Applicants respectfully traverse the rejections and reconsideration is hereby requested.

The rejection of claims 1, 2, 4, 8-11, 13-15, 21-24 and 26 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening is traversed and reconsideration is respectfully requested.

Claim 1 is allowable over Sullivan et al. in view of Gerland et al. and National Gardening in that claim 1 recites a combination of elements including, for example, “querying a user for at least one geographic region; receiving the at least one geographic region from the user; querying the user for the location of a gardening problem within said geographic region; receiving the at least one gardening problem from the user; querying database and generating a series of questions in response to the received at least one gardening problem; receiving a response to the series of questions from the user; querying the database and identifying at least one gardening material based upon a response to at least one of the querying.” Neither Sullivan et al., Gerland et al., nor National Gardening, singularly or in combination, teaches or suggests at least these features of the claimed invention. Accordingly, Applicants respectfully submit that claims 2, 4, and 8-11, which depend from claim 1, are also allowable over the cited references.

Claim 13 is allowable over Sullivan et al. in view of Gerland et al. and National Gardening in that claim 13 recites a combination of elements including, for example, “presenting a user with at least one inquiry... identifying at least one gardening material based upon a response to said inquiry; wherein at least one inquiry is directed toward the user’s geographic region and the at least one gardening material is identified based at least partially upon the user’s geographic region.” Neither Sullivan et al., Gerland et al., nor National Gardening, singularly or in combination, teaches or suggests at least these features of the claimed invention. Accordingly, Applicants respectfully submit that claims 14, 15, and 21-24, which depend from claim 13, are also allowable over the cited references.

Claim 26 is allowable over Sullivan et al. in view of Gerland et al. and National Gardening in that claim 26 recites a combination of elements including, for example, “querying a user for a geographic region in which the garden material is to be utilized; receiving the

geographic region from the user; querying the user for an object affected by the gardening problem... receiving the object affected by the gardening problem from the user; querying the user for a type of gardening problem... receiving the type of gardening problem from the user; determining whether the type of gardening problem is a pest problem, a fertilizer need problem, or information pertaining to seeds; and generating a list of products based partially upon the geographic region.” Neither Sullivan et al., Gerland et al., nor National Gardening, singularly or in combination, teaches or suggests at least these features of the claimed invention.

Further, the Examiner cites Sullivan et al. at Figures 1-12 and at column 2, line 44-column 3, line 60, column 4, line 55-column 8, line 47, and column 11, lines 22-58 as teaching “presenting the user with at least one query directed towards the symptoms of a problem observed by the user and identifying a solution based at least partially upon the user’s responses to the inquiry...” but as failing to teach “that the problems/information required are related to gardening material.”

Applicants agree with the Examiner’s interpretation of Sullivan et al. to the extent that Sullivan et al. does not present a user with at least one query directed to generic problems related to gardening material. Further, Applicants respectfully submit that, not only is Sullivan et al. silent as to “problems... related to gardening material,” Sullivan et al. is also silent as to at least the aforementioned combination of claimed elements. In making the assertion above, Applicants respectfully submit that Sullivan et al. is not being attacked individually. Rather, Applicants are merely clarifying what Sullivan et al. fails to teach with respect to what is actually being claimed to clarify what Gerland et al. and National Gardening need to teach for the combination of Sullivan et al. in view of Gerland et al. and National Gardening to meet all of the claimed elements in at least claims 1, 13, and 26.

To reiterate, Applicants respectfully submit claim 1 recites a combination of elements including, for example, “querying a user for at least one geographic region; receiving the at least one geographic region from the user; querying the user for the location of a gardening problem within said geographic region; receiving the at least one gardening problem from the user; querying database and generating a series of questions in response to the received at least one gardening problem; receiving a response to the series of questions from the user; querying the database and identifying at least one gardening material based upon a response to at least one of the querying.” Moreover, Applicants respectfully submit claim 13 recites a combination of elements including, for example, “presenting a user with at least one inquiry... identifying at least one gardening material based upon a response to said inquiry; wherein at least one inquiry is directed toward the user’s geographic region and the at least one gardening material is identified based at least partially upon the user’s geographic region.” Further, Applicants respectfully submit claim 26 recites a combination of elements including, for example, “querying a user for a geographic region in which the garden material is to be utilized; receiving the geographic region from the user; querying the user for an object affected by the gardening problem... receiving the object affected by the gardening problem from the user; querying the user for a type of gardening problem; receiving the type of gardening problem from the user; determining whether the type of gardening problem is a pest problem, a fertilizer need problem, or information pertaining to seeds; and generating a list of products based partially upon the geographic region.”

With respect to the Examiner’s interpretation of what Sullivan et al. fails to disclose (i.e., that the problems/information required are related to gardening material), Applicants respectfully submit that while the aforementioned combination of elements may be generically directed to,

for example, “gardening material,” it is unreasonable to assert that “problems... related to gardening material” necessarily (inherently) include at least the aforementioned combination of claimed elements. Accordingly, Applicants respectfully submit Sullivan et al. fails to teach or suggest at least the aforementioned combination of elements as reiterated above. Moreover, by stating that Sullivan et al. fails to teach “that the problems/information required are related to gardening material,” the Examiner appears to generalize the deficiencies of Sullivan et al. to the point that none of the aforementioned combination of claimed elements have fully addressed by at least Gerland et al. or National Gardening, as will be discussed in greater detail below.

For example, in attempting to cure the generalized deficiencies of Sullivan et al. (not the actual deficiencies of Sullivan et al. with respect to the actual combination of claim elements listed above) the Examiner relies upon Gerland et al. as teaching “in the same field of electronic commerce... that gardening websites exist which carry out business related to resolving gardening problems” and concludes it would have been obvious to modify Sullivan et al. “to include the features of gardening sites such as resolving gardening problems... [because] doing so would enable customers to use Sullivan’s method and system to resolve gardening problems.”

Preliminarily, while a reference relied upon under 35 U.S.C. § 103 must be analogous, a prima facie case of obviousness can only be established when at least the following are satisfied: (1) there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings; and (2) the reference (or references when combined) must teach or suggest all the claim elements (*emphasis added*). See M.P.E.P. § 2143. Applicants respectfully submit that obviousness cannot be established when the references (or references when combined) teach or suggest that which all of the claim elements are generically directed

towards. Indeed, distilling an invention down to the “gist” or “thrust” of an invention disregards the requirement of analyzing the claimed subject matter “as a whole.” See M.P.E.P. § 2141.02.

Further, assuming *arguendo* that Gerland et al. teaches the existence of gardening websites “related to resolving gardening problems,” Applicants respectfully submit Gerland et al. is silent with respect to any of the deficiencies of Sullivan et al. in light of the actual combination of claimed elements listed above. In making the assertion above, Applicants respectfully submit that Gerland et al. is not being attacked individually. Rather, Applicants are merely clarifying what Gerland et al. fails to teach with respect to what is actually being claimed and with respect to the actual (not generalized) deficiencies of Sullivan et al. For similar reasons as discussed above with respect to Sullivan et al., Applicants respectfully submit that while Gerland et al. may be generically directed to “problems... related to gardening material” and teach of the existence of gardening websites that “carry out business related to resolving gardening problems,” Gerland et al., without more, cannot be reasonably interpreted as teaching or suggesting any of the actual combination of claimed elements as discussed above. Accordingly, absent impermissible hindsight reasoning, Applicants respectfully submit that the combination of Sullivan et al. in view of Gerland et al. cannot be interpreted as teaching or suggesting at least the aforementioned combination of claimed elements.

To reiterate, Applicants respectfully submit claim 1 recites a combination of elements including, for example, “querying a user for at least one geographic region; receiving the at least one geographic region from the user; querying the user for the location of a gardening problem within said geographic region; receiving the at least one gardening problem from the user; querying database and generating a series of questions in response to the received at least one gardening problem; receiving a response to the series of questions from the user; querying the

database and identifying at least one gardening material based upon a response to at least one of the querying.” Moreover, Applicants respectfully submit claim 13 recites a combination of elements including, for example, “presenting a user with at least one inquiry... identifying at least one gardening material based upon a response to said inquiry; wherein at least one inquiry is directed toward the user’s geographic region and the at least one gardening material is identified based at least partially upon the user’s geographic region.” Further, Applicants respectfully submit claim 26 recites a combination of elements including, for example, “querying a user for a geographic region in which the garden material is to be utilized; receiving the geographic region from the user; querying the user for an object affected by the gardening problem... receiving the object affected by the gardening problem from the user; querying the user for a type of gardening problem; receiving the type of gardening problem from the user; determining whether the type of gardening problem is a pest problem, a fertilizer need problem, or information pertaining to seeds; and generating a list of products based partially upon the geographic region.”

In continuing the rejection, the Examiner stated “Sullivan/Gerland does not disclose that the processor queries the user about a geographic region and the user furnishes the same information to the processor.”

Applicants agree with the Examiner’s interpretation that Sullivan et al. in view of Gerland et al. does not teach “that the processor queries the user about a geographic region and furnishes the same information to the processor.” Further, Applicants respectfully submit that Sullivan et al. in view of Gerland et al. is also silent with respect to at least the aforementioned combination of claimed elements. In making the assertion above, Applicants are merely clarifying what Sullivan et al. in view of Gerland et al. fails to teach with respect to what is

actually being claimed to clarify what National Gardening needs to teach for the combination of Sullivan et al. in view of Gerland et al. and National Gardening to meet all of the claimed elements in at least claims 1, 13, and 26.

To reiterate, Applicants respectfully submit claim 1 recites a combination of elements including, for example, “querying a user for at least one geographic region; receiving the at least one geographic region from the user; querying the user for the location of a gardening problem within said geographic region; receiving the at least one gardening problem from the user; querying database and generating a series of questions in response to the received at least one gardening problem; receiving a response to the series of questions from the user; querying the database and identifying at least one gardening material based upon a response to at least one of the querying.” Moreover, Applicants respectfully submit claim 13 recites a combination of elements including, for example, “presenting a user with at least one inquiry... identifying at least one gardening material based upon a response to said inquiry; wherein at least one inquiry is directed toward the user’s geographic region and the at least one gardening material is identified based at least partially upon the user’s geographic region.” Further, Applicants respectfully submit claim 26 recites a combination of elements including, for example, “querying a user for a geographic region in which the garden material is to be utilized; receiving the geographic region from the user; querying the user for an object affected by the gardening problem... receiving the object affected by the gardening problem from the user; querying the user for a type of gardening problem; receiving the type of gardening problem from the user; determining whether the type of gardening problem is a pest problem, a fertilizer need problem, or information pertaining to seeds; and generating a list of products based partially upon the geographic region.”

In attempting to cure the alleged deficiencies in the combination of Sullivan et al. in view of Gerland et al., the Examiner cites National Gardening as allegedly teaching “that the user informs the processor a geographic location when queried by the process for the same (see page 1, “Selecting a region”) and processor provides gardening information as relevant to that geographic location.” The Examiner concludes that it would have been obvious to modify “Sullivan/Gerland to include the feature of user informing a geographical region upon being prompted by the processor... [because] doing so helps the processor respond with relevant information [to that] region only.”

Preliminarily, assuming *arguendo* that National Gardening teaches wherein a “user informs the processor a geographic location when queried by the process for the same,” Applicants respectfully submit National Gardening is silent with respect to all of the deficiencies in the combination of Sullivan et al. in view of Gerland et al. in light of the actual combination of claimed elements listed above. In making the assertion above, Applicants respectfully submit that National Gardening is not being attacked individually. Rather, Applicants are merely clarifying what National Gardening fails to teach with respect to what is actually being claimed. Even if National Gardening can be reasonably understood as teaching wherein a “user informs the processor a geographic location when queried by the process for the same,” National Gardening, without more, cannot be reasonably interpreted as curing all of the deficiencies in the combination of Sullivan et al. in view of Gerland et al. with respect to the actual combination of claimed elements discussed above. Accordingly, absent impermissible hindsight reasoning, Applicants respectfully submit that the combination of Sullivan et al. in view of Gerland et al. and National Gardening cannot be interpreted as teaching or suggesting at least the aforementioned combination of claimed elements.

To reiterate, Applicants respectfully submit claim 1 recites a combination of elements including, for example, “querying a user for at least one geographic region; receiving the at least one geographic region from the user; querying the user for the location of a gardening problem within said geographic region; receiving the at least one gardening problem from the user; querying database and generating a series of questions in response to the received at least one gardening problem; receiving a response to the series of questions from the user; querying the database and identifying at least one gardening material based upon a response to at least one of the querying.” Moreover, Applicants respectfully submit claim 13 recites a combination of elements including, for example, “presenting a user with at least one inquiry... identifying at least one gardening material based upon a response to said inquiry; wherein at least one inquiry is directed toward the user’s geographic region and the at least one gardening material is identified based at least partially upon the user’s geographic region.” Further, Applicants respectfully submit claim 26 recites a combination of elements including, for example, “querying a user for a geographic region in which the garden material is to be utilized; receiving the geographic region from the user; querying the user for an object affected by the gardening problem... receiving the object affected by the gardening problem from the user; querying the user for a type of gardening problem; receiving the type of gardening problem from the user; determining whether the type of gardening problem is a pest problem, a fertilizer need problem, or information pertaining to seeds; and generating a list of products based partially upon the geographic region.”

Lastly, the Examiner alleges that the combination of Sullivan et al. in view Gerland et al. and National Gardening teaches “identifying at least one gardening material based upon the inquiry... (see at least Gerland and National Gardening).”

Applicants respectfully submit, however, that both Gerland et al. and National Gardening are completely with respect to any teaching that “at least one gardening material [is identified]” based upon any inquiry, as asserted by the Examiner. Applicants invite the Examiner to clarify exactly where within Gerland et al. or National Gardening this claimed element is reasonably taught or suggested.

In summary, Applicants respectfully submit that the combination of Sullivan et al. in view of Gerland et al. and National Gardening fails to teach or suggest at least all of the elements set forth above. To reiterate, Applicants respectfully submit claim 1 recites a combination of elements including, for example, “querying a user for at least one geographic region; receiving the at least one geographic region from the user; querying the user for the location of a gardening problem within said geographic region; receiving the at least one gardening problem from the user; querying database and generating a series of questions in response to the received at least one gardening problem; receiving a response to the series of questions from the user; querying the database and identifying at least one gardening material based upon a response to at least one of the querying.” Moreover, Applicants respectfully submit claim 13 recites a combination of elements including, for example, “presenting a user with at least one inquiry... identifying at least one gardening material based upon a response to said inquiry; wherein at least one inquiry is directed toward the user’s geographic region and the at least one gardening material is identified based at least partially upon the user’s geographic region.” Further, Applicants respectfully submit claim 26 recites a combination of elements including, for example, “querying a user for a geographic region in which the garden material is to be utilized; receiving the geographic region from the user; querying the user for an object affected by the gardening problem... receiving the object affected by the gardening problem from the user; querying the

user for a type of gardening problem; receiving the type of gardening problem from the user; determining whether the type of gardening problem is a pest problem, a fertilizer need problem, or information pertaining to seeds; and generating a list of products based partially upon the geographic region.”

The rejection of claims 3 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening is traversed and reconsideration is respectfully requested.

Claims 3 and 16 include all of the limitations of claims 1 and 13, respectively, as discussed above. Accordingly, Applicants respectfully submit that claims 3 and 16 are allowable by virtue of their dependence from claims 1 and 13.

The rejection of claims 5-7, 18-20, and 28-30 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening and further in view of Sturgeon et al. is traversed and reconsideration is respectfully requested.

Preliminarily, Applicants note that while the opening sentence of the present rejection stated claims 5-7, 18-20, and 28-30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening and further in view of Sturgeon et al., claims 4 and 17 were also rejected within the body of the rejection. For purposes of expediting prosecution, Applicants hereby assume claims 4 and 17 were intended to be included within the opening sentence of the present rejection.

Claims 4-7 include all of the limitations of claim 1, as discussed above, and Sullivan et al. in view of Gerland et al. and National Gardening fails to teach or suggest at least these features of independent claim 1 as recited above. Similarly, Sturgeon et al. fails to cure the deficiencies of Sullivan et al. in view of Gerland et al. and National Gardening. Accordingly,

Applicants respectfully submits that the Examiner has not established a *prima facie* case of obviousness regarding claims 4-7 in view of claim 1, as above.

Claims 17-20 include all of the limitations of claim 13, as discussed above, and Sullivan et al. in view of Gerland et al. and National Gardening fails to teach or suggest at least the features of independent claim 13 as recited above. Similarly, Sturgeon et al. fails to cure the deficiencies of Sullivan et al. in view of Gerland et al. and National Gardening. Accordingly, Applicants respectfully submits that the Examiner has not established a *prima facie* case of obviousness regarding claims 17-20 in view of claim 13, as above.

Claims 28-30 include all of the limitations of claim 26, as discussed above, and Sullivan et al. in view of Gerland et al. and National Gardening fails to teach or suggest at least the features of independent claim 26 as recited above. Similarly, Sturgeon et al. fails to cure the deficiencies of Sullivan et al. in view of Gerland et al. and National Gardening. Accordingly, Applicants respectfully submits that the Examiner has not established a *prima facie* case of obviousness regarding claims 28-30 in view of claim 26, as above.

The rejection of claims 12 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening is traversed and reconsideration is respectfully requested.

Claims 12 and 25 include all of the limitations of claims 1 and 13, respectively, as discussed above. Accordingly, Applicants respectfully submit claims 12 and 25 are allowable by virtue of their dependence from claims 1 and 13, respectively.

The rejection of claim 27 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al., National Gardening, and an "Official Notice" is traversed and reconsideration is respectfully requested.

Application No.: 09/373,576
Office Action dated October 7, 2003
Reply to Office Action dated January 7, 2004

Docket No.: 6945.035.00

Claim 27 includes all of the limitations of claim 26 as discussed above. Accordingly, Applicants respectfully submit claim 27 is allowable by virtue of its dependence from claim 26.

If the Examiner deems that a telephone conversation would further the prosecution of this application, the Examiner is invited to call the undersigned at (202) 496-7500.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. §1.136, and any additional fees required under 37 C.F.R. §1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911. A duplicate copy of this sheet is enclosed.

Dated: January 7, 2004

Respectfully submitted,

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